

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature First Regular Session - 2015

IN THE SENATE

SENATE BILL NO. 1024

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO IDAHO ENERGY RESOURCES AUTHORITY; AMENDING SECTION 67-8908, IDAHO CODE, TO REVISE THE AUTHORITY'S POWERS, TO PROVIDE ADDITIONAL POWERS REGARDING CONSERVATION MEASURES AND TO CLARIFY THAT THE AUTHORITY IS NOT A TAXING DISTRICT; AMENDING SECTION 67-8909, IDAHO CODE, TO REVISE POWERS OF THE AUTHORITY TO PLEDGE AND ASSIGN ITS INTEREST IN A FACILITY AND TO PROVIDE REQUIREMENTS FOR THE PLEDGE OR ASSIGNMENT; AMENDING CHAPTER 89, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-8926, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR CONSERVATION MEASURES AND TO PROVIDE BONDING AUTHORITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-8908, Idaho Code, be, and the same is hereby amended to read as follows:

67-8908. POWERS. (1) The authority shall have the following powers, which are hereby declared to be necessary to enable the authority to carry out and effectuate the purposes and provisions of this chapter, together with all powers incidental thereto or necessary for the performance thereof:

(a) To have perpetual succession as a body politic and corporate;

(b) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(c) To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

(d) To have and to use a corporate seal and to alter the same at pleasure;

(e) To maintain an office at such place or places as it may designate;

(f) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;

(g) To acquire, whether by purchase, gift, grant, bequest, devise, exchange, eminent domain or otherwise, own, hold, improve, lease, transfer, assign, pledge and dispose of, any real or personal property or any interest therein necessary or convenient in connection with any facility or its purposes under this chapter; provided however, that the power of eminent domain is limited to only those purposes and participating utilities as authorized by section 7-701, Idaho Code;

(h) To acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, manage, operate, lease as lessee or lessor, and regulate any facility; to enter into contracts for any and all of such purposes and for the acquisition and management of fuel supplies, provided such is reasonably necessary for the operation and maintenance of any facility; to enter into contracts and agreements to manage risks asso-

1 ciated with the purchase and sale of energy and energy commodities, pro-
2 vided such is reasonably necessary for the operation and maintenance of
3 any facility; and shall designate one (1) or more qualified participat-
4 ing utilities as agent or agents of the authority, as agreed to among the
5 participating utilities, with respect to the foregoing;

6 (i) To sell, lease or otherwise provide by contract to one (1) or more
7 participating utilities the services, output or product provided by any
8 or all of the facilities undertaken by the authority upon such terms and
9 conditions as the authority and the participating utilities shall deem
10 proper, and to establish, charge, collect and revise from time to time
11 such rents, fees and charges for such services, output or product as
12 provided for in this chapter;

13 (j) To borrow money and to issue bonds for any of the purposes described
14 in this chapter, to issue refunding bonds and to enter into contracts
15 and agreements determined by the authority to be necessary or desirable
16 to manage its debt service and interest costs;

17 (k) To establish rules and regulations for the use of facilities and to
18 designate a participating utility as its agent, to establish rules and
19 regulations for the use of the facilities undertaken or operated by such
20 participating utility;

21 (l) To employ or contract for consulting engineers, architects, at-
22 torneys, accountants, construction and financial experts, superinten-
23 dents, managers, and such other employees and agents as may be necessary
24 in its judgment and to fix their compensation;

25 (m) To enter into contracts, agreements or other transactions with and
26 accept grants and the cooperation of the United States or any agency
27 thereof or any state or any agency or governmental subdivision thereof,
28 in furtherance of the purposes of this chapter including, but not lim-
29 ited to, the development, maintenance, operation, and financing of any
30 facility and to do any and all things necessary in order to avail itself
31 of such aid and cooperation;

32 (n) To receive and accept aid or contributions from any source of money,
33 property, labor, or other things of value, to be held, used, and ap-
34 plied to carry out the purposes of this chapter subject to such condi-
35 tions upon which such grants and contributions may be made, including,
36 but not limited to, gifts or grants from any department or agency of the
37 United States or any state for any purpose consistent with this chapter;

38 (o) To assign and pledge all or any part of its revenues and income and
39 to mortgage or otherwise encumber any or all of its facilities and the
40 site or sites thereof, whether then owned or thereafter acquired, for
41 the benefit and security of the holders of bonds issued to finance such
42 facilities or any portion thereof;

43 (p) To make loans to any participating utility to finance the cost of
44 any facilities in accordance with an agreement between the authority
45 and such participating utility;

46 (q) To make secured or unsecured loans to a participating utility to
47 refinance obligations and indebtedness incurred for facilities under-
48 taken and completed prior to or after the enactment of this chapter when
49 the authority finds that such financing is in the public interest and
50 either alleviates the financial hardship upon the participating util-

1 ity or is in connection with other financing by the authority for such
 2 participating utility or may be expected to result in a cost-effective
 3 delivery of electricity to the consumers served by the participating
 4 utility, or any combination thereof;

5 (r) To charge to and equitably apportion its administrative costs and
 6 expenses incurred in the exercise of the powers and duties conferred by
 7 this chapter among the participating utilities that have entered into
 8 contracts with the authority;

9 (s) To procure insurance against any loss in connection with its prop-
 10 erty and other assets in such amounts and from such insurers as it deems
 11 desirable and to self-insure against such risks as it shall deem to be
 12 reasonable;

13 (t) To invest any funds not needed for immediate use or disbursement,
 14 including any funds held in reserve, in:

15 (i) Bonds, notes and other obligations of the United States or any
 16 agency or instrumentality thereof and other securities secured by
 17 such bonds, notes or other obligations;

18 (ii) Money market funds which are insured or the assets of which
 19 are limited to obligations of the United States or any agency or
 20 instrumentality thereof;

21 (iii) Time certificates of deposit and savings accounts;

22 (iv) Commercial paper which, at the time of its purchase, is rated
 23 in the highest category by a nationally recognized rating service;

24 (v) Property or securities in which the state treasurer may in-
 25 vest funds in the state treasury pursuant to section 67-1210,
 26 Idaho Code; and

27 (vi) With respect to any funds representing bond proceeds or
 28 amounts pledged to the payment of bonds, such other investments as
 29 may be specified in a bond resolution or trust indenture securing
 30 bonds of the authority;

31 (u) To participate in cooperative ventures with any agencies or organi-
 32 zations in order to provide affordable and reliable energy to the resi-
 33 dents of the state;

34 (v) To undertake and finance renewable energy generation projects de-
 35 veloped by an independent power producer; and

36 (w) To finance or refinance the cost of conservation measures as pro-
 37 vided in section 67-8926, Idaho Code; and

38 (x) To do all things necessary and convenient to carry out the purposes
 39 of this chapter.

40 (2) Notwithstanding any other provision of this chapter, the authority
 41 shall have no power to:

42 (a) Acquire the operating property of any investor-owned, private, co-
 43 operative, municipal or other utility by the exercise of the power of
 44 eminent domain;

45 (b) Provide financing for the acquisition of the operating property of
 46 any such utility by or under threat of eminent domain, in either case un-
 47 less such utility consents in writing to the acquisition; or

48 (c) Deliver retail electricity or related retail products or services
 49 to any ultimate consumer, whether in violation of the Idaho electric
 50 supplier stabilization act or otherwise.

1 (3) The authority is not a "taxing district," as defined in section
 2 67-3901, Idaho Code, and, for so long as any bonds are outstanding or any con-
 3 tract, agreement or transaction between the authority and a participating
 4 utility is in effect, the authority shall not have the power and shall not be
 5 authorized to be a debtor under the U.S. bankruptcy code, title 11 U.S.C., or
 6 any other bankruptcy, insolvency, moratorium, liquidation, dissolution or
 7 wind-down law.

8 SECTION 2. That Section 67-8909, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

10 67-8909. DEVELOPMENT, ACQUISITION AND CONSTRUCTION OF FACILI-
 11 TIES. (1) The authority will endeavor to achieve efficiencies and economies
 12 of scale by pursuing the development of facilities with multiple partici-
 13 pating utilities on a joint and cooperative basis and shall, to the fullest
 14 extent practicable, offer all potential participating utilities the oppor-
 15 tunity to participate in the development of a facility and the electricity,
 16 service or product to be provided by the facility.

17 (2) The authority shall not commence the development or financing for
 18 any facility until it shall have entered into contractual arrangements with
 19 one (1) or more participating utilities that contain provisions acceptable
 20 to both the authority and the participating utility or utilities and which
 21 are determined by the authority to provide adequate assurance that all capi-
 22 tal, operating and related costs of the facility will be paid by or provided
 23 for by one (1) or more participating utilities.

24 (3) The authority may acquire, construct and own any facility under-
 25 taken by it, may cause such facility to be acquired and constructed on its
 26 behalf by one (1) or more participating utilities as its agent, may enter
 27 into joint ownership arrangements with respect to any facility, and may en-
 28 ter into contractual arrangements with third parties for the acquisition and
 29 construction of a facility.

30 (4) Upon the payment in full of all bonds issued by the authority to fi-
 31 nance or refinance the cost of a facility and upon the discharge of all other
 32 obligations of the authority with respect to a facility, the authority will
 33 convey title to the facility to the participating utility or utilities with
 34 respect to such facility, unless a participating utility requests in writing
 35 to the authority that it continue to retain title of the facility on behalf
 36 of the participating utility. Any such conveyance shall be in proportion
 37 to the funds provided or paid by the participating utility in respect of the
 38 debt service and operating costs of the facility. The authority may, in its
 39 agreements with a participating utility, pledge and assign its interest in a
 40 facility to secure its obligation to convey title to the facility as provided
 41 in this section. Any such pledge shall be made in the same manner and with
 42 the same effect as provided in section 67-8915, Idaho Code, and shall be sub-
 43 ordinate only to any pledge or assignment to secure the payment of the bonds
 44 issued by the authority to finance the development, acquisition or construc-
 45 tion of the facility.

46 SECTION 3. That Chapter 89, Title 67, Idaho Code, be, and the same is
 47 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 48 ignated as Section 67-8926, Idaho Code, and to read as follows:

67-8926. CONSERVATION MEASURES. (1) For purposes of this section:

(a) "Conservation" means a reduction in electric power consumption as a result of increases in the efficiency of energy use, production or distribution;

(b) "Conservation measure" means an action, property, facility, equipment, improvement, system or measure to promote conservation that provides a conservation resource that is acquired by a participating utility pursuant to the Pacific Northwest electric power planning and conservation act, 16 U.S.C. section 839 et seq., including, but not limited to, loans and grants to consumers for insulation, weatherization, increased system efficiency and waste energy recovery by direct application;

(c) "Conservation resource" means actual or planned reductions in electric demand or consumption as a result of one (1) or more conservation measures; and

(d) "Participating utility" means only a federal agency that is a participating utility described in section 67-8903(8)(b), Idaho Code.

(2) The authority may, under such terms and conditions as are approved by the authority:

(a) Issue bonds to finance or refinance the cost of conservation measures, thereby giving rise to conservation resources that are acquired by a participating utility;

(b) Pledge as security for the bonds payments to be made by a participating utility for its acquisition of conservation resources or other payments to be received in connection with the conservation resources or the associated conservation measures; and

(c) Enter into contracts and agreements, including grant agreements, between or among the authority, a participating utility, any of the customers served by the participating utility and other persons or entities in connection with the acquisition of conservation resources by a participating utility, the financing or refinancing of conservation measures, the funding, implementation, management or administration of conservation measures, or the administration of funds, including the proceeds of bonds and other moneys relating to conservation resources and conservation measures.

(3) Bonds issued pursuant to this section shall be issued in accordance with sections 67-8915 through 67-8918, Idaho Code, and shall be subject to all provisions of this act applicable to bonds issued by the authority; provided that:

(a) Conservation resources and conservation measures shall not be considered to be a facility, other than for purposes of section 67-8903(8), Idaho Code; and

(b) The authority shall not own conservation measures, which may be owned by or on behalf of any other person or entity.

(4) It is hereby determined and declared that all actions taken by the authority pursuant to this section are in furtherance of the purposes of this act, and will promote and achieve conservation of natural resources, efficiencies and economies of scale. This section is supplemental to the other provisions of this act and shall be liberally construed to effectuate the financing of conservation measures by the authority.

1 SECTION 4. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after its
3 passage and approval.